

established by the DFAS Privacy Act Program.

(3) Evaluates each new proposed system of records during the planning stage. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(ii) The impact on the purpose or mission if categories of information are not collected. All data fields must be necessary to accomplish a lawful purpose or mission.

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The disposition schedule for information.

(v) The method of disposal.

(vi) Cost of maintaining the information.

(4) Complies with the publication requirements of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310). Submits final publication requirements to the appropriate DFAS Privacy Act Officer.

(l) *DFAS program manager(s)*. Reviews system alterations or amendments to evaluate for relevancy and necessity. Reviews will be conducted annually and reports prepared outlining the results and corrective actions taken to resolve problems. Reports will be forwarded to the appropriate Privacy Act Officer.

(m) *Federal government contractors*. When a DFAS organizational element contracts to accomplish an agency function and performance of the contract requires the operation of a system of records or a portion thereof, DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) and this part apply. For purposes of criminal penalties, the contractor and its employees shall be considered employees of DFAS during the performance of the contract.

(1) *Contracting involving operation of systems of records*. Consistent with Federal Acquisition Regulation (FAR)<sup>2</sup>

and the DoD Supplement to the Federal Acquisition Regulation (DFAR)<sup>3</sup>, Part 224.1, contracts involving the operation of a system of records or portion thereof shall specifically identify the record system, the work to be performed and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR and DFAR.

(2) *Contracting*. For contracting subject to this part, the Agency shall:

(i) Informs prospective contractors of their responsibilities under the DFAS Privacy Act Program.

(ii) Establishes an internal system for reviewing contractor performance to ensure compliance with the DFAS Privacy Act Program.

(3) *Exceptions*. This rule does not apply to contractor records that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract.

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(4) *Contracting procedures*. The Defense Acquisition Regulatory Council is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(5) *Disclosing records to contractors*. Disclosing records to a contractor for use in performing a DFAS contract is considered a disclosure within DFAS. The contractor is considered the agent of DFAS when receiving and maintaining the records for the agency.

## Subpart B—Systems of Records

### § 324.5 General information.

(a) The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS systems of records. DFAS Privacy Act Program Procedural Rules, DFAS Exemption Rules and System of Record Notices are the three types of documents relating to the Privacy Act

<sup>2</sup>Copies may be obtained at cost from the Superintendent of Documents, P.O. Box 37195, Pittsburgh, PA 15250-7954.

<sup>3</sup>See footnote 2 to § 324.4(m)(1)

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Program that must be published in the FEDERAL REGISTER.

(b) A system of records used to retrieve records by a name or some other personal identifier of an individual must be under DFAS control for consideration under this regulation. DFAS will maintain only those Systems of Records that have been described through notices published in the FEDERAL REGISTER.

(1) *First amendment guarantee.* No records will be maintained that describe how individuals exercise their rights guaranteed by the First Amendment unless maintenance of the record is expressly authorized by Statute, the individual or for an authorized law enforcement purpose.

(2) *Conflicts.* In case of conflict, the provisions of DoD 5400.11-R take precedence over this supplement or any DFAS directive or procedure concerning the collection, maintenance, use or disclosure of information from individual records.

(3) *Record system notices.* Record system notices are published in the FEDERAL REGISTER as notices and are not subject to the rule making procedures. The public must be given 30 days to comment on any proposed routine uses prior to implementing the system of record.

(4) *Amendments.* Amendments to system notices are submitted in the same manner as the original notices.

### § 324.6 Procedural rules.

DFAS procedural rules (regulations having a substantial and direct impact on the public) must be published in the FEDERAL REGISTER first as a proposed rule to allow for public comment and then as a final rule. Procedural rules will be submitted through the appropriate DFAS Privacy Act Officer to the Department of Defense Privacy Office. Appendix B to this part provides the correct format. Guidance may be obtained from the DFAS-HQ and DFAS Center Records Managers on the preparation of procedural rules for publication.

### § 324.7 Exemption rules.

(a) *Submitting proposed exemption rules.* Each proposed exemption rule submitted for publication in the FED-

ERAL REGISTER must contain: The agency identification and name of the record system for which an exemption will be established; The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system; The particular subsection(s) of the Privacy Act from which the system will be exempt; and the reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed. No exemption to all provisions of the Privacy Act for any System of records will be granted. Only the Director, DFAS may make a determination that an exemption should be established for a system of record.

(b) *Submitting exemption rules for publication.* Exemption rules must be published in the FEDERAL REGISTER first as proposed rules to allow for public comment, then as final rules. No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the FEDERAL REGISTER as a final rule. The DFAS Privacy Act Officer will submit proposed exemption rules, in proper format, to the Defense Privacy Office, for review and submission to the FEDERAL REGISTER for publication. Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(c) *Exemption for classified records.* Any record in a system of records maintained by the Defense Finance and Accounting Service which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G)-(e)(4)(I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12589 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Defense Finance and Accounting Service under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information